
SENATE BILL No. 74

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.

Synopsis: Unemployment compensation benefit period. Removes the requirement that a claimant for unemployment benefits serve a waiting period of one week of total, partial, or part-total unemployment in order to receive unemployment compensation benefits. Makes conforming changes.

Effective: January 1, 2003.

Simpson

December 7, 2001, read first time and referred to Committee on Pensions and Labor.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 74

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4-2-22 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 22. "Valid claim"
3 means a claim filed by an individual who has established qualifying
4 wage credits and who is totally, partially, or part-totally unemployed;
5 Provided, no individual in a benefit period may file a valid claim for a
6 ~~waiting period~~ or benefit period rights with respect to any period
7 subsequent to the expiration of such benefit period.

8 SECTION 2. IC 22-4-2-29 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 29. "Insured
10 unemployment" means unemployment during a given week for which
11 waiting period credit or benefits, **if applicable**, are claimed under the
12 state employment security program, the unemployment compensation
13 for federal employees program, the unemployment compensation for
14 veterans program, or the railroad unemployment insurance program.

15 SECTION 3. IC 22-4-14-4 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 4. ~~As a condition~~
17 ~~precedent to the payment of benefits to an individual with respect to~~

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any week such individual shall be required to serve a waiting period of one (1) week in which he has been totally, partially or part-totally unemployed and with respect to which he has received no benefits, but during which he was eligible for benefits in all other respects and was not otherwise ineligible for benefits under any provisions of this article. Such waiting period shall be a week in the individual's benefit period and during such week such individual shall be physically and mentally able to work and available for work. No An individual in a benefit period may not file for waiting period or benefit period rights with respect to any subsequent period. Provided, however, That no waiting period shall be required as a prerequisite for drawing extended benefits.

SECTION 4. IC 22-4-15-1, AS AMENDED BY P.L.290-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for ~~waiting period~~ or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of ~~his~~ the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and



1 betterment of wages or working conditions; and thereafter was
 2 employed on said job;

3 (B) having been simultaneously employed by two (2)
 4 employers, the individual leaves one (1) such employer
 5 voluntarily without good cause in connection with the work
 6 but remains in employment with the second employer with a
 7 reasonable expectation of continued employment; or

8 (C) the individual left to accept recall made by a base period
 9 employer.

10 (2) An individual whose unemployment is the result of medically
 11 substantiated physical disability and who is involuntarily
 12 unemployed after having made reasonable efforts to maintain the
 13 employment relationship shall not be subject to disqualification
 14 under this section for such separation.

15 (3) An individual who left work to enter the armed forces of the
 16 United States shall not be subject to disqualification under this
 17 section for such leaving of work.

18 (4) An individual whose employment is terminated under the
 19 compulsory retirement provision of a collective bargaining
 20 agreement to which the employer is a party, or under any other
 21 plan, system, or program, public or private, providing for
 22 compulsory retirement and who is otherwise eligible shall not be
 23 deemed to have left the individual's work voluntarily without
 24 good cause in connection with the work. However, if such
 25 individual subsequently becomes reemployed and thereafter
 26 voluntarily leaves work without good cause in connection with the
 27 work, the individual shall be deemed ineligible as outlined in this
 28 section.

29 (5) An otherwise eligible individual shall not be denied benefits
 30 for any week because the individual is in training approved under
 31 Section 236(a)(1) of the Trade Act of 1974, nor shall the
 32 individual be denied benefits by reason of leaving work to enter
 33 such training, provided the work left is not suitable employment,
 34 or because of the application to any week in training of provisions
 35 in this law (or any applicable federal unemployment
 36 compensation law), relating to availability for work, active search
 37 for work, or refusal to accept work. For purposes of this
 38 subdivision, the term "suitable employment" means with respect
 39 to an individual, work of a substantially equal or higher skill level
 40 than the individual's past adversely affected employment (as
 41 defined for purposes of the Trade Act of 1974), and wages for
 42 such work at not less than eighty percent (80%) of the individual's

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average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

- (A) the employment was outside the individual's labor market;
- (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
- (C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer;
- (3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- (4) damaging the employer's property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
- (7) conduct endangering safety of self or coworkers; or
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

SECTION 5. IC 22-4-15-2, AS AMENDED BY P.L.290-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2003]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for ~~waiting period~~ or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;

(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. The maximum benefit amount of the individual's current claim may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(e) In determining whether or not any such work is suitable for an

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individual, the department shall consider:

- (1) the degree of risk involved to such individual's health, safety, and morals;
- (2) the individual's physical fitness and prior training and experience;
- (3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
- (4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- (4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible

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individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (The Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

SECTION 6. IC 22-4-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 3. (a) An individual ~~shall be~~ is ineligible for ~~waiting period or~~ benefit rights for any week with respect to which ~~his the individual's~~ total or partial or part-total unemployment is due to a labor dispute at the factory, establishment, or other premises at which ~~he the individual~~ was last employed.

(b) This section ~~shall~~ does not apply to an individual if ~~he the individual~~ has terminated ~~his the individual's~~ employment, or ~~his the individual's~~ employment has been terminated, with the employer involved in the labor dispute; or if the labor dispute ~~which that~~ caused ~~his the individual's~~ unemployment has terminated and any period necessary to resume normal activities at ~~his the individual's~~ place of employment has elapsed; or if all of the following conditions exist: ~~He The individual~~ is not participating in or financing or directly interested in the labor dispute which caused ~~his the individual's~~ unemployment; and ~~he the individual~~ does not belong to a grade or class of workers of which, immediately before the commencement of ~~his the individual's~~ unemployment, there were members employed at the same premises as

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1 ~~he~~, **the individual**, any of whom are participating in or financing or
 2 directly interested in the dispute; and ~~he~~ **the individual** has not
 3 voluntarily stopped working, other than at the direction of ~~his~~ **the**
 4 **individual's** employer, in sympathy with employees in some other
 5 establishment or factory in which a labor dispute is in progress.

6 (c) If in any case separate branches of work ~~which that~~ are
 7 commonly conducted as separate businesses in separate premises are
 8 conducted in separate departments of the same premises, each ~~such~~
 9 department shall, for the purpose of this section, be deemed to be a
 10 separate factory, establishment, or other premises.

11 (d) Upon request of any claimant or employer involved in an issue
 12 arising under this section, the deputy shall, and in any other case the
 13 deputy may, refer claims of individuals with respect to whom there is
 14 an issue of the application of this section to an administrative law judge
 15 who shall make the initial determination with respect thereto, in
 16 accordance with the procedure in IC 22-4-17-3.

17 (e) Notwithstanding any other provisions of this article, an
 18 individual ~~shall be~~ not be ineligible for ~~waiting period or~~ benefit rights
 19 under this section solely by reason of ~~his~~ **the individual's** failure or
 20 refusal to apply for or to accept recall to work or reemployment with an
 21 employer during the continuance of a labor dispute at the factory,
 22 establishment, or other premises of the employer, if the individual's last
 23 separation from the employer occurred prior to the start of the labor
 24 dispute and was permanent or for an indefinite period.

25 SECTION 7. IC 22-4-15-4, AS AMENDED BY P.L.290-2001,
 26 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JANUARY 1, 2003]: Sec. 4. (a) An individual ~~shall be~~ **is** ineligible for
 28 ~~waiting period or~~ benefit rights: For any week with respect to which the
 29 individual receives, is receiving, or has received payments equal to or
 30 exceeding ~~his~~ **the individual's** weekly benefit amount in the form of:

31 (1) deductible income as defined and applied in IC 22-4-5-1 and
 32 IC 22-4-5-2; or

33 (2) any pension, retirement or annuity payments, under any plan
 34 of an employer whereby the employer contributes a portion or all
 35 of the money. This disqualification shall apply only if some or all
 36 of the benefits otherwise payable are chargeable to the experience
 37 or reimbursable account of ~~such~~ **the** employer, or would have
 38 been chargeable except for the application of this chapter. ~~For the~~
 39 purposes of this subdivision, ~~(2)~~; federal old age, survivors, and
 40 disability insurance benefits are not considered payments under
 41 a plan of an employer whereby the employer maintains the plan
 42 or contributes a portion or all of the money to the extent required

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by federal law.

(b) If the payments described in subsection (a) are less than ~~his the~~ **individual's** weekly benefit amount an otherwise eligible individual ~~shall is~~ not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

SECTION 8. IC 22-4-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 5. Except as provided in IC 1971, 22-4-22, an individual ~~shall be~~ **is** ineligible for ~~waiting period or~~ benefit rights: For any week with respect to which or a part of which ~~he the individual~~ receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. ~~Provided,~~ **that However,** this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that ~~he the individual~~ is not entitled to such employment benefits, including benefits to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85.

SECTION 9. IC 22-4-16-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. Notwithstanding any other provisions of this article, if an individual knowingly fails to disclose amounts earned during any week in ~~his~~ **waiting period, the individual's** benefit period or extended benefit period with respect to which benefit rights or extended benefit rights are claimed, or knowingly fails to disclose or has falsified as to any fact ~~which that~~ would have disqualified ~~him the individual~~ or rendered ~~him the individual~~ ineligible for benefits or extended benefits or would have reduced ~~his the individual's~~ benefit rights or extended benefit rights during such a week, all of ~~his the individual's~~ wage credits established prior to the week of the falsification or failure to disclose shall be cancelled, and any benefits or extended benefits ~~which that~~ might otherwise have become payable to ~~him the individual~~ and any benefit rights or extended benefit rights based upon those wage credits shall be forfeited.

SECTION 10. IC 22-4-17-2, AS AMENDED BY P.L.290-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2003]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of ~~his~~ **the individual's** status as an insured worker in a form prescribed by the board. A written notice of the determination of insured status shall be furnished ~~him~~ **to the individual** promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within twenty (20) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within twenty (20) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within twenty (20) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period,

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1 determine the claimant's eligibility with respect to each week for which
 2 the claimant claims ~~waiting period credit~~ or benefit rights, the validity
 3 of the claimant's claim therefor, and the cause for which the claimant
 4 left the claimant's work, or may refer such claim to an administrative
 5 law judge who shall make the initial determination with respect thereto
 6 in accordance with the procedure in IC 22-4-17-3.

7 (e) In cases where the claimant's benefit eligibility or
 8 disqualification is disputed, the department shall promptly notify the
 9 claimant and the employer or employers directly involved or connected
 10 with the issue raised as to the validity of such claim, the eligibility of
 11 the claimant for ~~waiting period credit~~ or benefits, or the imposition of
 12 a disqualification period or penalty, or the denial thereof, and of the
 13 cause for which the claimant left the claimant's work, of such
 14 determination and the reasons thereof. Except as otherwise hereinafter
 15 provided in this subsection regarding parties located in Alaska, Hawaii,
 16 and Puerto Rico, unless the claimant or such employer, within twenty
 17 (20) days after such notification was mailed to the claimant's or the
 18 employer's last known address, or otherwise delivered to the claimant
 19 or the employer, asks a hearing before an administrative law judge
 20 thereon, such decision shall be final and benefits shall be paid or
 21 denied in accordance therewith. With respect to notice of disputed
 22 administrative determination or decision mailed or otherwise delivered
 23 to the claimant or employer either of whom is located in Alaska,
 24 Hawaii, or Puerto Rico, unless such claimant or employer, within
 25 twenty-five (25) days after such notification was mailed to the
 26 claimant's or employer's last known address or otherwise delivered to
 27 the claimant or employer, asks a hearing before an administrative law
 28 judge thereon, such decision shall be final and benefits shall be paid or
 29 denied in accordance therewith. If such hearing is desired, the request
 30 therefor shall be filed with the commissioner in writing within the
 31 prescribed periods as above set forth in this subsection and shall be in
 32 such form as the board may prescribe. In the event a hearing is
 33 requested by an employer or the department after it has been
 34 administratively determined that benefits should be allowed to a
 35 claimant, entitled benefits shall continue to be paid to said claimant
 36 unless said administrative determination has been reversed by a due
 37 process hearing. Benefits with respect to any week not in dispute shall
 38 be paid promptly regardless of any appeal.

39 (f) ~~No~~ A person may **not** participate on behalf of the department in
 40 any case in which the person is an interested party.

41 (g) Solely on the ground of obvious administrative error appearing
 42 on the face of an original determination, and within the benefit year of

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1 the affected claims, the commissioner, or a representative authorized
2 by the commissioner to act in the commissioner's behalf, may
3 reconsider and direct the deputy to revise the original determination so
4 as to correct the obvious error appearing therein. Time for filing an
5 appeal and requesting a hearing before an administrative law judge
6 regarding the determinations handed down pursuant to this subsection
7 shall begin on the date following the date of revision of the original
8 determination and shall be filed with the commissioner in writing
9 within the prescribed periods as above set forth in subsection (c).

10 (h) Notice to the employer and the claimant that the determination
11 of the department is final if a hearing is not requested shall be
12 prominently displayed on the notice of the determination which is sent
13 to the employer and the claimant.

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